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ADVICE TO POLITICIANS:
**Marriage
Equality**
for Same-Sex Couples



by Evan Wolfson

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The American people are engaged in an important discussion about families and children, and marriage equality for same-sex couples is part of that discussion. With hundreds of same-sex couples, including many Americans, already married in Canada since June and now the historic ruling by the Massachusetts Supreme Judicial Court in favor of full marriage equality, the dialogue about gay people's freedom to marry is not going away.

Recent articles in the *Washington Post* and *New York Times* indicate that right-wing political groups are pushing hard to make gay people's equality, including the freedom to marry, a wedge issue in the 2004 elections. A substantial number of moderate and independent-minded voters in all parties oppose excluding same-sex couples from marriage and its tangible and intangible protections and responsibilities because of the harm the exclusion causes existing and future families. Many more oppose the resultant creation of second-class citizenship in the United States. Many more oppose attacks on families, including proposals to amend the Constitution.

Same-sex couples have been getting married in Massachusetts since June 2004 (in addition to those already married in Canada, where the sky has not fallen).

No candidate for office will be able to ignore this debate or the right-wing's attempt to polarize and divide the country around this and other social issues. For candidates,

a strategy to handle the question is politically essential as well as morally and substantively desirable. It is important for candidates to be able to talk about fairness and equality without diverting their campaigns from other matters about which the American people are understandably most concerned — national security and the economy.

Here is a suggested answer on marriage that addresses the concerns of all those who believe in equal rights for all Americans and their families, including same-sex couples and children with gay parents:

I recognize and value the dignity and worth of all families. I believe in marriage and the good it offers society, and respect those who accept the commitment, protections, and responsibilities of marriage. Allowing same-sex couples to share that commitment does nothing to diminish my marriage with my wife (or husband). Freedom of religion means that churches, synagogues, mosques, and other religious institutions may decide whether to marry any particular couple. But a democratic and constitutional government should not discriminate as to which couples get a marriage license. Government should not be putting obstacles in the path of people seeking to care for their loved ones, nor should government create unequal classes of citizens.

America is strongest when we support all our people equally and build strong communities. Because I believe in fairness and families, I support the responsibilities and security of marriage for same-sex couples willing to take on that commitment.

I disagree with those who would use this question to divide the American people in order to distract from the economy and foreign policy. The majority of Americans believe in equal rights and protections for their fellow citizens, and so do I.

Candidates best serve themselves — and the nation — by simply embracing full marriage rights for gay and lesbian Americans. Here's why:

1. Ending discrimination in marriage is the right thing to do.

The arguments put forward to justify the exclusion of same-sex couples from marriage do not hold up. To mention just a few:

CLAIM	FACT
<p>Marriage is a religious institution, and government recognition of "gay marriage" would violate religious liberties.</p>	<p>No church or clergy should, or would, be compelled to recognize gay unions (just as they need not allow divorced people to remarry, or need not perform a wedding of an interfaith couple, if they choose not to).</p> <p>At issue here is marriage — a legal institution regulated by the government. Every year, at least 40% of heterosexual couples in the United States get married without a church, synagogue, mosque or religious ceremony. The First Amendment plainly protects the right of people of faith to organize themselves according to their own beliefs and traditions, but it also rightly bars religious interference in who gets a marriage license.</p>
<p>Civil unions, domestic partnership, or other non-marriage alternatives for gay people are good enough</p>	<p>Separate and unequal is un-American. Non-marriage alternatives for gay people provide only some of the thousands of legal and economic protections that come with marriage at the federal and state level, not to mention in the private sector. Civil union and domestic partnership fail to provide the clarity and security that comes with marriage, the portability and respect families need as they travel or do business outside their state, and the basic dignity and vocabulary of equality and love that our society expresses through the institution of marriage. Even the most sweeping partnership law (California) and civil union law (Vermont) do not provide gay families basic federal protections such as Social Security, tax equity, and immigration rights.</p>

Marriage exists to promote procreation.

Millions of non-gay married Americans are in non-procreative marriages (think Bob and Elizabeth Dole, or George and Martha Washington). At the same time, many same-sex couples are raising kids. It makes no sense to punish these children for having the "wrong" kind of parents, or withhold the structure of marriage from those parents. Justice Scalia conceded the weakness of this argument in the 2003 Supreme Court decision in *Lawrence v. Texas*.

Letting gay citizens wed would weaken the institution of marriage.

To the extent our society believes — as conservatives have argued — that marriage promotes stability, fidelity, and community, why would that not be true for same-sex couples as well? Gays will not use up all the marriage licenses, or discourage any non-gay couple from entering into their own loving, committed relationships. Even Bob Barr, sponsor of the 1996 federal anti-marriage law, now concedes as much, and Canada, Belgium, and the Netherlands show that societies can accord equality without the sky falling.

There is simply no logical or constitutional reason why gay couples should not have access to the same basic civil right to marry that the Supreme Court has said may not be denied, for example, to deadbeat dads or convicted felons. And there is no good reason for maintaining discrimination that harms real families and young lives.

2. A significant base of Americans supports equality.

More than two-thirds of Americans believe that gay people will win the freedom to marry. The polls are in flux and trends on marriage equality are positive. Looking at the national aggregate, the country is now in fact about evenly divided over support for full marriage for gay and lesbian Americans.

Though a majority does not yet support marriage equality, the majority is ready to accept it.

Providing the components of marriage (i.e., particular protections and responsibilities) to gay families, and certain themes (equality, government not putting obstacles in families' paths, fairness for families) show majority support. And substantial majorities oppose discriminatory measures or attacks on gay families, including proposals to amend the Constitution.

Key elements of the population are even stronger supporters. Registered Democrats, independent voters, likely voters, women, young people, and majorities in key states (California, Connecticut, Massachusetts, New Jersey, and New York, for example) all support marriage equality.

3. Half-solutions only prolong the questioning, satisfying no one.

The best way to deal with an inevitable, controversial issue is to face it forthrightly and give a principled clear answer that frees candidates up to move to other subjects,

rather than bogging down in a series of questions about an inconsistent or convoluted half-solution.

Trying to avoid supporting marriage equality by suggesting other, lesser solutions only invites further questions about how such an arrangement would be defined, what form it would take, how it differs from marriage, whether states or the federal government do or do not have to do something, whether there is a new bureaucracy that has to recreate what marriage already does, why a candidate is not for full equality or, conversely, why the candidate does not then support a constitutional amendment walling off marriage, etc. As with the so-called "don't ask, don't tell" discriminatory policy, the straddling answer will satisfy no one, and the candidate will have spent time that could have been spent on preferred themes and issues.

4. Any candidate not anti-gay will be tagged as the "gay marriage" candidate anyway.

If a candidate has endorsed legal recognition of gay relationships in any form, the right-wing is going to attack him or her as being for "gay marriage" anyway. Subtle distinctions are not likely to persuade conservatives to support a fairness candidate, and will only disappoint the majority of the candidate's own base and the many independent voters who tend disproportionately to be libertarian in their outlook. By standing on clear principle and throwing the challenge back, candidates for fairness can reverse the wedge and force opponents to deal with the overreaching of the anti-gay forces in their base.

Candidates should reframe the discussion as being about fairness vs. division, and not cede ground to the opposition: "My position is pro-marriage; my opponent's is anti-gay."

Conclusion

Ending discrimination in marriage is both right and inevitable. Any other solutions condemn gay Americans as second-class citizens, both separate and unequal, harming families and the country. Candidates of any party can stand with young people, majorities of likely voters, and history on the right side of this civil rights struggle, supporting equality and strong families, a side that the majority of Americans are ready to embrace. And in so doing, candidates can show themselves to be principled leaders and devote the bulk of their time to the themes and issues most central to their campaigns.

What you can do

Find five friends, family members, coworkers, or neighbors and ask them to support marriage equality. Your personal ask matters. Explain to them why denying committed couples the freedom to marry is a form of discrimination that harms real families and promotes inequality. Then ask them to make the case for marriage equality to five other people.

Contact your local and state representatives and send them this document. Ask them to adopt marriage equality as part of their political platform.

Then send this to presidential candidates:

<http://www.johnkerry.com/contact/>

<http://georgebush.com/ContactUs/>

your senators:

http://www.senate.gov/general/contact_information/senators_cfm.cfm

and your representatives:

<http://www.house.gov/writerep/>

The freedom to marry can be won one person at a time — and the first step is to break the silence and claim your voice.

ENDNOTES

- 1 Lawrence v. Texas, June 26, 2003 (Scalia, J., dissenting) (“what the benefits of marriage to homosexual couples exercising ‘[t]he liberty protected by the Constitution,’ [citation omitted]? Surely not the encouragement of procreation, since the sterile and the elderly are allowed to marry.”)
- 2 NBC News/*Wall Street Journal*, Sept. 1999.
- 3 Gallup, Sept. 19–21, 2003 (*USA Today*, Oct. 6, 2003: “While 48% of those surveyed say allowing gay unions ‘will change our society for the worse,’ 50% say they would be an improvement or have no effect.”). Of course, there is not yet overall majority support, and polls differ depending on how and where the question is asked.
- 4 Hart Research/American Viewpoint, July 2003.
- 5 Hart Research/American Viewpoint July 2003; ABC News Poll, Sept. 3–7, 2003.
- 6 E.g., Decision Research, Oct. 16–22, 2003 (“By a 59% to 35% margin, Massachusetts voters say gay or lesbian couples should have the right to enter into marriage. Support levels include 55% of Catholic voters, 62% of women, 57% of men, and at least 56% in every region of the state. Voters see a ban on gay marriage as discrimination.”)
- 7 E.g., *Washington Times*, Sept. 23, 2003 (quoting Republican Party chair Ed Gillespie: “I have a hard time distinguishing between civil union and gay marriage.”) Our opponents are against any recognition for same-sex couples, whatever it is called, and label any position that is inclusive of gay people a “slippery slope” to full equality (not to mention the decline and fall of the nation). Candidates can challenge opponents as discriminatory and against basic protections, equality, and fairness that solid majorities favor.

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ABOUT THE AUTHOR

Evan Wolfson is Executive Director of Freedom to Marry, the gay and non-gay partnership working to win marriage equality nationwide. Before founding Freedom to Marry, Evan served as marriage project director for Lambda Legal Defense & Education Fund, was co-counsel in the historic Hawaii marriage case, and participated in numerous gay rights and HIV/AIDS cases.

Citing his national leadership on marriage equality and his appearance before the U.S. Supreme Court in *Boy Scouts of America v. James Dale*, *the National Law Journal* in 2000 named Evan one of "the 100 most influential lawyers in America." In 2004, Evan was named one of the "Time 100," *Time* magazine's list of "the 100 most influential people in the world."

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
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